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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,140	02/14/2002	Paul Durrant	5681-10800	6877
7590	08/19/2004		EXAMINER	
B. Noel Kivlin Conley, Rose, & Tayon, P.C. P.O. Box 398 Austin, TX 78767			DUNCAN, MARC M	
			ART UNIT	PAPER NUMBER
			2113	

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/075,140	DURRANT ET AL.	
	Examiner	Art Unit	
	Marc M Duncan	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 14 February 2002.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 14 February 2002 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Status of the Claims

Claims 4, 5, 6, 7, 11, 12, 13, 14 and 15 are objected to under 37 CFR 1.75(c).

Claims 14-17 are rejected under 35 U.S.C. 112, second paragraph.

Claims 1-7 and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-3 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Mori.

Claim Objections

Claims 4, 5, 6, 7, 11, 12, 13, 14 and 15 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to exactly what function the computer executable instructions serve. In one case they may be configuring a computer to operate in a certain manner. In the other case they may be performing a monitoring method as outlined in the preceding claims.

These functions are not equivalent and it is therefore unclear as to what is being claimed.

Claims 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7 and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1-7:

A device driver is not a process, machine, manufacture or composition of matter as required by 35 U.S.C. 101. Claims 1-7 are accordingly rejected as non-statutory subject matter.

Regarding claim 14:

A computer program is not a process, machine, manufacture or composition of matter as required by 35 U.S.C. 101. Claim 14 is accordingly rejected as non-statutory subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Mori.

Regarding claim 1:

Mori teaches said device driver being operable to monitor an operational status of said device in col. 1 lines 57-58 and lines 64-65. Mori teaches that a fault has occurred, which is a change in operational status.

Mori also teaches, consequent upon a change in said operational status, to generate fault report data indicating whether the change of status was caused internally within the device or externally by another connected device in col. 3 line 50-col. 4 line 27. In the system of Mori each of the devices is considered individually. In the example given, from the view of device HDD 3, there will be fault report data indicating that the change in operational status was caused by an external device, in this case device HDD 4. In the case of device HDD 4, there will be fault report data that the change of operational status was caused internally, as HDD 4 is, in fact, the device at fault.

Regarding claim 2:

Mori teaches wherein said fault report data includes an indication of an operational status of the device in col. 2 lines 10-11 and col. 3 line 50-col. 4 line

27. Each device is indicated as either functioning normally or being the cause of the fault. This is indicating the operational status of a device as claimed.

Regarding claim 3:

Mori teaches wherein, if said fault report data indicates that said change of status was caused externally, said device driver is operable to generate fault direction information indicative of a connection from which the external fault is perceived in col. 3 line 50-col. 4 line 27. The fault report contains data such as that stating that HDD 3 is not causing the change of status internally but that HDD 4 is the device causing the change in status. This is exactly equivalent to the claimed step of generating fault direction information indicative of a connection from which the external fault is perceived.

Regarding claim 8:

The claim is rejected as the method of using the apparatus of claim 1.

Regarding claim 9:

The claim is rejected as the method of using the apparatus of claim 2.

Regarding claim 10:

The claim is rejected as the method of using the apparatus of claim 3.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not relied upon contains elements of the instant claims and/or represents a current state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc M Duncan whose telephone number is

703-305-4622. The examiner can normally be reached on M-T and TH-F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 703-305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md


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